

Free Trade Agreement between Hong Kong, China and Chile

Exporting Goods Originating in Hong Kong to Chile

Operational Details

Rules of Origin under the Agreement

1. The rules of origin for the purpose of obtaining preferential tariff treatment under the Agreement are set out in Chapter 4 of the Agreement and its Annexes. Accordingly, a good shall qualify as an originating good if it:

- (a) is wholly obtained or produced in the Area of a Party¹ as provided for in paragraph 2;
- (b) is produced entirely in the Area of one or both Parties exclusively from originating materials from one or both Parties; or
- (c) is produced in the Area of one or both Parties using non-originating materials that conform to a change in tariff classification requirement, a regional value content requirement (as provided for in paragraph 3) or other requirements as specified in Annex 4.2 of the Agreement (available at https://www.tid.gov.hk/en/our_work/trade_and_investment_agreements/ftas/chile/files/Annex4.2.pdf);

and the good meets the other applicable provisions of Chapter 4 of the Agreement.

Wholly Obtained or Produced Goods

2. The following goods shall be considered as wholly obtained or produced:

- (a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in the Area of a Party;
- (b) live animals born and raised in the Area of a Party;
- (c) goods obtained from live animals in the Area of a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in the Area of a Party;

¹ A **Party** refers to a contracting party of the Agreement, i.e. either Hong Kong or Chile. **Area** in respect of: (a) Hong Kong means the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, together with such other area(s) over which the HKSAR may be authorised to exercise jurisdiction in accordance with laws of the HKSAR; and (b) Chile means the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law.

- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or subsoil, in the Area of a Party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered in a Party and entitled to fly the flag of that Party in accordance with the *United Nations Convention on the Law of the Sea 1982* (“UNCLOS”);
- (g) goods processed or produced on board any factory ship registered in a Party and entitled to fly the flag of that Party in accordance with UNCLOS from the goods referred to in subparagraph (f);
- (h) goods extracted or taken by a Party, or a person of a Party, from the seabed or subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction, under exploitation rights granted in accordance with international law;
- (i) goods which are:
 - (i) waste and scrap derived from production or consumption in the Area of a Party provided that such goods are fit only for the recovery of raw materials; or
 - (ii) used goods collected in the Area of a Party provided that such goods are fit only for the recovery of raw materials; and
- (j) goods obtained or produced in the Area of a Party solely from goods referred to in subparagraphs (a) to (i) or from their derivatives.

Regional Value Content

3. The formula for calculating the regional value content (“RVC”) shall be:

$$\text{RVC} = [(\text{FOB} - \text{value of non-originating materials}) / \text{FOB}] \times 100 \%$$

where:

- (a) **FOB** is the free-on-board value of the good inclusive of the cost of transport to the port or site of final shipment abroad; and
- (b) **value of non-originating materials** is the CIF² at the time of importation or the earliest ascertained price paid or payable in the Area of the Party where the production takes place for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. When the producer of a good acquires non-originating materials within that Party the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier’s warehouse to

² **CIF** means the value of the good imported inclusive of the cost of insurance and freight up to the port or place of entry in the importing Party.

the producer's location. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

Accumulation

4. Originating goods or materials³ from the Area of a Party, incorporated into a good in the Area of the other Party, shall be considered to originate in the Area of the other Party. In other words, originating goods or materials from Chile shall be considered to originate in Hong Kong if they are incorporated into goods manufactured in Hong Kong for exporting to Chile under the Agreement.

Minimal Operations or Processes

5. Operations or processes undertaken by themselves or in combination with each other for purposes such as those listed below are considered to be minimal and shall not confer origin:

- (a) ensuring preservation in good condition for the purposes of transport or storage, such as drying, freezing, ventilation, chilling and like operations;
- (b) facilitating shipment or transportation;
- (c) packaging or presenting goods for sale;
- (d) affixing of marks, labels or other like distinguishing signs on goods or their packaging;
- (e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling, sharpening, simple grinding, slicing and other similar operations;
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (g) cleaning, including removal of oxide, oil, paint or other coverings;
- (h) simple painting and polishing operations;
- (i) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (j) simple mixing of goods, whether or not of different kinds;
- (k) simple assembly of parts of goods to constitute a complete good; and
- (l) changes of packing, unpacking or repacking operations, and breaking

³ **Originating good** or **originating material** means a good or material which qualifies as originating in accordance with paragraph 1.

up and assembly of consignments.

where:

simple generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity; and

simple mixing generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

6. Where a RVC approach has been applied, minimal processes or operations referred to in paragraph 5 shall be taken into account for the RVC calculation.

De Minimis

7. A good that does not undergo a change in tariff classification pursuant to Annex 4.2 of the Agreement is nonetheless an originating good if:

- (a) the value of all non-originating materials, including materials of undetermined origin, used or consumed in the production of the good that do not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; and
- (b) the good meets all other applicable requirements of Chapter 4 of the Agreement.

Direct Consignment

8. A good shall retain its originating status as determined under paragraph 1 if the following conditions have been met:

- (a) the good has been transported to the importing Party without passing through the territory of any non-Party; or
- (b) the good has transited through one or more non-Parties, with or without transshipment or temporary storage in those non-Parties, provided that:
 - (i) the good has not entered trade or commerce there; and
 - (ii) the good has not undergone any operation there other than unloading and reloading, repacking, splitting up or bulk breaking, or any operation required to preserve it in good condition or to transport it to the importing Party.

Treatment of Packing Materials and Containers

9. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

10. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good.

11. If a good is subject to a RVC requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Accessories, Spare Parts, Tools and Instructional or Information Material

12. For the purpose of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and
- (b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

Notwithstanding this, if a good is subject to a RVC requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Indirect Materials

13. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good. Under the Agreement, **indirect material** means a good used or consumed in the production, testing or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel and energy;
- (b) tools, dies and moulds;
- (c) spare parts and materials used in the maintenance of equipment and

buildings;

- (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

Identical and Interchangeable Materials

14. **Identical or interchangeable materials** are goods or materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination. In determining whether a good is an originating good, any identical or interchangeable materials shall be distinguished by:

- (a) physical separation of the goods; or
- (b) an inventory management method recognised in the generally accepted accounting principles of the exporting Party.

Declaration of Origin

15. Chile may require a Declaration of Origin of a good for which preferential tariff treatment is claimed. Where Chile requires a Declaration of Origin of a good, it shall grant preferential tariff treatment to goods imported into its Area from Hong Kong only in cases where an importer claiming preferential tariff treatment:

- (a) provides a Declaration of Origin of the good in accordance with Chapter 4 of the Agreement; and
- (b) provides other evidence to substantiate the origin of the goods, upon request.

16. The Declaration of Origin shall be completed in English and may be made in respect of one or more goods in the shipment. It shall be in conformity to the form as specified in Annex 4.15 of the Agreement. A copy is attached with the circular (**Annex II**) for reference. It is also available at https://www.tid.gov.hk/en/our_work/trade_and_investment_agreements/ftas/chile/files/Annex4.15.pdf. A Declaration of Origin will be valid for 1 year from the date of issuance.

Exceptions from Declaration of Origin

17. Chile may waive the requirement for a Declaration of Origin to admit goods pursuant to tariff preference where:

- (a) the customs value of the importation does not exceed US\$1,000 or the equivalent amount in Chile's currency or a higher amount as it may establish;
- (b) the goods are for personal use forming part of the personal luggage of a traveller; or
- (c) in respect of specific goods, Chile has waived the requirement for a Declaration of Origin.

18. Where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirement for a Declaration of Origin, the customs authority of Chile may deny preferential tariff treatment.

Compliance with Direct Consignment

19. Compliance with paragraph 8 may be evidenced by means of supplying to the customs authority of Chile either customs documents of a non-Party or documents of the relevant authorities of a non-Party or commercial shipping or freight documents.

Non-Party Invoicing

20. The customs authority of Chile shall accept a Declaration of Origin in cases where the invoice is issued by a company located in a non-Party, provided that the goods meet the requirements of paragraphs 1-14. The exporter shall indicate "Non-Party invoicing" in the Declaration of Origin (please refer to the overleaf note of Annex 4.15 of the Agreement).

Obligations of Importers, Exporters and Producers

Records Keeping

21. Exporters are required to maintain for a period of **not less than 3 years** after the issuance of the Declaration of Origin, all records relating to that exportation which are necessary to demonstrate to Chile that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment under the Agreement. Such records may be maintained in paper or electronic form.

Verification of Origin

22. For the purposes of determining whether a good imported into Chile from Hong Kong qualifies as an originating good, the customs authority of Chile should conduct a verification of eligibility for preferential tariff treatment by means of:

- (a) requests for information to the importer;
 - (b) requests for information to the exporter or producer in Hong Kong on the basis of a Declaration of Origin through Hong Kong Customs and Excise Department (C&ED);
 - (c) requests for information to C&ED;
 - (d) requests for visits to the factory or premises of an exporter or producer in Hong Kong in accordance with paragraphs 26-27 below; or
 - (e) such other procedures as the customs authorities of the Parties may agree.
23. Any such verification activities shall only be undertaken if:
- (a) there are reasonable grounds to doubt the accuracy or authenticity of the Declaration of Origin, or the origin status of the goods concerned; or
 - (b) the purpose is to ascertain the fulfilment of any other requirement of Chapter 4 of the Agreement.

24. For the purposes of paragraph 22(b), the exporter or producer shall provide the information requested, to the customs authority of Chile within a period of 90 days from the date of receipt of the request from C&ED.

25. The customs authority of Chile shall complete any action to verify eligibility for preferential tariff treatment within 270 days from the commencement of the conduct of verification pursuant to paragraph 22, and make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within 30 days from the date of completion of such action.

Exporter or Producer Visit

26. The customs authority of Chile, through C&ED, may request the exporter to:
- (a) subject to the consent of the exporter, permit the customs authority of Chile to visit the factory or premises of the exporter in company with C&ED;
 - (b) subject to the consent of the producer, arrange a visit to the factory or premises of the producer in company with C&ED, if the exporter is not the producer; and
 - (c) provide information relating to the origin of the good.

27. Prior to conducting a visit pursuant to paragraph 26, the customs authority of Chile shall issue a written communication with such a request to the exporter through C&ED in advance of the proposed date of the visit. The customs authority of Chile

shall not visit the factory or premises of any exporter or producer in Hong Kong without written prior consent from the exporter or producer given through C&ED.

Other Issues

Denial of Preferential Tariff Treatment

28. Chile may deny preferential tariff treatment for a good when:
- (a) the good does not qualify as an originating good pursuant to Chapter 4 of the Agreement;
 - (b) the importer, exporter or producer, as appropriate, fails to provide information which Chile has requested in the course of a verification process under paragraphs 22-25, or otherwise fails to comply with any of the relevant requirements of Chapter 4 of the Agreement; or
 - (c) under paragraphs 22-25, no reply within 270 days from the date of the verification request was received from C&ED or if the reply does not contain sufficient information to determine the authenticity of the document in question or the origin of the goods.
29. In the event preferential tariff treatment is denied, Chile shall ensure that its customs authority provides in writing to the exporter, the importer or producer, as the case may be, the reasons for that decision.

Refund of Import Duties

30. Where a Declaration of Origin is not provided at the time of importation of a good from Hong Kong pursuant to paragraph 15, Chile may impose the applied non-preferential import customs duty or require payment of a deposit on that good, where applicable. In such a case, the importer may apply for a refund of any excess import customs duty or deposit paid within 1 year of the date on which the good was imported, provided that:

- (a) a written declaration that the good presented qualifies as an originating good was provided to the customs authority of Chile at the time of importation;
 - (b) the Declaration of Origin is provided; and
 - (c) other documentation relating to the importation of the good as the customs authority of Chile may require is provided.
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